

ISSUE DATE: October 2, 1995

DOCKET NO. G-002/M-94-156

ORDER APPROVING ANNUAL NAS REPORT, EXPANDING THE LAKES AREA
PROJECT, AND REQUIRING REFUND

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request From Northern
States Power Gas Utility for a Miscellaneous
Rate Change to Establish a New Area
Surcharge

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PROCEDURAL HISTORY

On May 13, 1994, the Commission issued its ORDER APPROVING AND MODIFYING NEW AREA SURCHARGE TARIFF in this matter. In that Order, the Commission approved Northern States Power Company's (NSP's or the Company's) revised new area surcharge (NAS) tariff as modified in the Order. The Order directed the Company to file an annual report, beginning March 1, 1995, on all projects subject to the new area surcharge and on the status of recovery for each project.

On March 1, 1995, NSP filed its first annual report for the Lakes Area project.

On May 3, 1995, the Minnesota Department of Public Service (the Department) filed its comments regarding the Company's report.

On May 15, 1995, the Company filed reply comments.

On August 31, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. NSP's Annual Report

NSP stated that the only distribution system expansion subject to the NAS approved in this matter is the Lakes Area project which was constructed in 1994. The project involved installation of approximately 40 miles of high pressure transmission lines, approximately 500 miles of transmission and distribution system mains and 6,199 service lines.

The Company's report included an updated NAS calculation model. According to the Company, the NAS calculation model should have a net present value (NPV) of the revenue

deficiencies/excesses of approximately \$0 after including the surcharge in the calculation. The NPV calculated in the updated model showed a significant deficiency for the project.

Finally, NSP argued that it would be premature to make a definitive judgment about the outcome of the surcharge just after the completion of the initial construction phase of this project because of several differences between the original forecast and the actual results:

- construction activity was delayed until all approvals were received;
- more service lines were installed than forecasted; and
- a distribution system was installed in Baxter, which was not included as part of the original project.

B. The Department's Comments

The Department stated that while the Company's original filing did not comply with the reporting requirements of the Commission's Order, additional information supplied by the Company in response to Department information requests were adequate to meet the reporting requirements of this and a related docket.

The Department stated NSP increased the scope of the approved surcharge and substantially increased the estimated cost of the project by extending service to the cities of Baxter and Brainerd. The Department noted that surcharge collection in Baxter and Brainerd was not expressly approved in the Commission's May 13, 1994 Order or in any other Order. The Department stated that NSP's inclusion of Baxter and Brainerd changed the project so substantially that grounds existed for the Commission to reject the Company's filing without prejudice to NSP filing a separate surcharge request for Baxter and Brainerd. The Department stated that it would not recommend such a course, however, because it would entail possible delays or other detrimental impacts to surcharge customers.

Regarding Baxter and Brainerd, the Department recommended that the Commission accept their inclusion in the current project and permit NSP to continue to collect the same surcharge revenues from these two cities. The Department suggested that the Commission clarify that NSP may not offer a surcharge to potential customers in any other cities without prior authorization from the Commission.

C. NSP's Reply Comments

NSP disagreed with the Department's assertion that Baxter and Brainerd were not approved for surcharge collections in this docket. The Company also disagreed that it was not authorized to offer a surcharge to potential customers in any other cities without prior authorization from the

Commission. The Company asserted that it was authorized to serve potential gas customers anywhere in Crow Wing and Cass counties.

In support of its contention, NSP argued that the Lakes Area project was always described to the Commission as a project to serve potential gas customers in Crow Wing and Cass counties in Minnesota. The Company noted that it had never provided a definitive list of communities which might be served by the project in the application or in responses to information requests. Instead, it noted, its initial filing in this docket contained a map of the anticipated project scope.

NSP argued that its interpretation of the Commission's Order (that it was allowed to charge a NAS for new service *anywhere* within the two county area) was reasonable because when the Commission made its decision NSP had not finalized its natural gas franchises with communities in the area and consequently the final scope of the Lakes Area project could not be determined. The Company stated that while the Order did not expressly approve the NAS for Baxter and Brainerd, neither did it exclude those communities from the area to be served under the NAS.

In addition, the Company asserted that it was extending its distribution line to serve the City of Pine River (located in Cass County) and would charge those new customers the NAS without obtaining specific approval from the Commission because it had no obligation to do so under the Order.

Finally, the Company stated at the hearing on this matter that it had always described this project as involving approximately 500 miles of service lines and that since the project, including extension of service to Brainerd and Baxter, did not exceed the 500 mile limit, it had not exceeded its authority.

D. Commission Analysis

1. Annual Report

The Commission finds that the report filing, as supplemented by Information Request Responses satisfies the reporting requirements as listed in the Commission's Orders. See Ordering Paragraph 1.

There are, however, several issues raised in the course of reviewing this report that are of concern to the Commission. These issues are addressed as follows.

2. Economic Viability of Area Expansions

It appears that the Company expanded its distribution system to Baxter even though it was not economically viable to do so. The Commission will want to examine in future rate cases

whether utilities are making uneconomic expansions simply to compete for service area expansions and to determine the level of rate payer benefit, if any, from such activities.

In addition, Commission review of the utilities' NAS annual reports will provide the opportunity to identify whether the companies' original forecasts of economic viability are so inaccurate as to place in question the advisability of authorizing a NAS.

3. Scope of the Lakes Area Project

NSP's interpretation that the Commission's May 13, 1994 Order authorized the Company to collect a NAS for new service anywhere in the two county area (Crow Wing and Cass) is inaccurate. The Order describes the system expansion proposed by the Company as follows:

The Company sought approval of a procedure for calculating future surcharges and approval of specific surcharges for *a planned system expansion north of Brainerd*. Order at page 1.

This description alone (north of Brainerd) obviously excludes Brainerd. It also clearly excludes Baxter, which lies to the west of Brainerd, not to its north. If the Company felt that this description was incorrect, it could have requested reconsideration or clarification of the Order.

Moreover, the open-ended authorization which the Company claims to find in the Commission's Order was what the Order specifically rejected.

The Company's proposal would give it almost unlimited flexibility in setting surcharge amounts for individual projects. The Commission cannot delegate its responsibility for maintaining a just and reasonable rate design to the Company, and will require that all surcharge amounts be approved by the Commission. Order at page 2.

The Company's claim that it was always clear that it sought authority to impose the NAS on new customers served *anywhere* on the map filed with its petition is not consistent with the fact that 1) the map clearly shows where the major gas lines for the proposed project are located and 2) the cost information it included with the filing was for the expansion as represented by the gas lines appearing on the map.

Finally, regarding the asserted 500 mile authorization, the Order established no such benchmark. Indeed the Order did not describe the limits on authority to impose the NAS in terms of miles of pipe authorized. Instead, as the term "new *area* surcharge" indicates, the Order viewed the Lakes Area project in terms of territory and granted authority accordingly.

In short, the Lakes Area project approved in the May 3, 1994 Order was limited to the area that could be served by the gas lines appearing on the map that the Company originally filed with the Commission. The addition of other areas (Baxter, Brainerd, and Pine River¹) to the Lakes Area project at this time is discussed below.

4. Correction of Tariff Pages

In its May 31, 1994 compliance filing, the Company submitted updated tariff pages describing its NAS methodology. The Department has compared the compliance filing sheets word for word with the original filing sheets, which were approved in the May 13, 1994 Order. In so doing, the Department found many changes between the approved original filing and the compliance filing.

The Commission will direct the Company to work with Commission Staff to develop tariff pages that accurately describe the NAS methodology. These revised tariff pages will replace the compliance filing pages filed on May 31, 1994. See Ordering Paragraph 4.

5. Additions to the Lakes Area Project

The Department has reviewed the cost studies involved with two areas where NSP is not currently authorized to impose the Lakes Area NAS surcharge: Baxter and Brainerd. The Department found no reason to oppose their inclusion in the Lakes Area project.

Although the Department did not review the financial records for Pine River, collection of the Lakes Area surcharge from customers in Pine River appears warranted under the following analysis. Service to that city is an *extension* of the Lakes Area project rather than a stand-alone new project. Service to Pine River is by means of a transmission line extension off the Lakes Area system rather than directly from a pipeline. In addition, the Lakes Area project has brought gas service much closer to Pine River and in fact has made service to Pine River feasible. As such, it is appropriate that Pine River subscribers share in the cost of building the system that benefits them.

Although sharing is appropriate, it would be inappropriate for Pine River customers to subsidize customers of the original Lakes Area project. Allowing them to receive service on the same terms and conditions that apply to the Lakes Area project will prevent any such subsidy.

Nor would it be appropriate for the original Lakes Area project subscribers to subsidize the Pine River subscribers. Such a subsidy would occur if the extension of service to Pine River increased total project costs to the point of requiring extension of the number of years that the original subscribers would be required to pay the surcharge. At this point in the development of the Lakes Area project, however, the number of years that the original subscribers will pay the set monthly surcharge amount has reached the maximum: 15 years. As the Company's report indicated, even without the addition of Baxter and Brainerd, the expenses for the Lakes Area

¹ These areas *appeared* on the map originally submitted by the Company but could not be served by the pipe lines indicated on the map.

project were such that the surcharge would be imposed on the original Lakes Area project subscribers for the maximum term, 15 years. In these circumstances, the addition of further territories, regardless of the costs involved, cannot increase the burden upon the original subscribers.²

Based on the Department's report and the Commission's foregoing analysis, the Commission finds that future collection of the Lakes Area NAS in these three areas (Baxter, Brainerd *and* Pine River) would be appropriate. The Commission will authorize the Company to offer service to these three areas, as of the date of this Order, at the same terms and conditions applicable in the other parts of the Lakes Area project. See Ordering Paragraph 2.

6. Refund of Amount Collected Without Authority

Of the three areas identified (Baxter, Brainerd, and Pine River), NSP has already begun to charge the NAS in Baxter and Brainerd. Prior to this Order, NSP has been doing so without authority. Any imposition of a surcharge without authority is illegal. Accordingly, the Commission will direct the Company to refund the illegally collected amount. To clarify, the amount illegally collected is the amount of *surcharge* collected from customers in Baxter and Brainerd, not the base amount for the gas provided, from the date that the Company began imposing the surcharge to the date of this Order. See Ordering Paragraph 3.

7. Clarification of When Further Authority Must Be Sought

It was established in the Commission's May 13, 1994 Order and has been re-emphasized in this Order that NSP may not offer a surcharge to potential customers in areas that are near but not currently a part of the Lakes Area project without prior authorization from the Commission. Filings requesting approval for such extensions should be accompanied by financial data regarding the proposed addition, for informational purposes.

Further, as a matter of administrative efficiency, it may be desirable to provide the Company some level of flexibility regarding when it must seek additional authority to extend service beyond the areas currently authorized as part of the Lakes Area project, as amended in this Order. The Commission will, therefore, direct the Company to work with Commission Staff and the Department to develop proposed language that would demarcate the line beyond which additional authority would be required. See Ordering Paragraph 5.

ORDER

1. The annual report filed on March 1, 1995 by Northern States Power Company (NSP or

² The Commission's willingness in this case to approve expansion of the Lake Area project without review of the financial data is conditioned on the fact that the surcharge burden on subscribers in the original Lakes Area project has reached its maximum limit. When this is not the case, substantive review of the financial data to ensure equitable treatment of original customers remains necessary.

the Company) pursuant to the Commission's May 13, 1994 Order in this matter is accepted.

2. The Lakes Area Project is hereby increased in size by the addition of Baxter, Brainerd, and Pine River. Accordingly, NSP is authorized, from the date of this Order, to collect the Lakes Area new area surcharge (NAS) in three additional locations (Baxter, Brainerd, and Pine River) at the same terms and conditions applicable in other parts of the Lakes Area project.
3. At the earliest billing period possible, the Company shall refund to its customers in Baxter and Brainerd any surcharge amount that the Company collected from those customers prior to the date of this Order. The refund may be made by way of billing credit or by check and shall be accompanied by an insert which notifies the customers of the refund and explains the reason for the refund.
4. NSP shall work with Commission Staff to develop tariff pages that accurately describe the NAS methodology and file those revised tariff pages to replace those previously filed by the Company within 30 days of this Order.
5. Within 30 days of this Order, NSP shall file proposed tariff language describing what level of proposed expansion of the Lakes area project will trigger the requirement that the Company seek and acquire Commission authorization to proceed. In formulating its proposal, the Company shall work with Commission Staff and the Department.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)